IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1146 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	No
5	Whether it is to be circulated to the civil judge ?	No

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KARTIK ALIAS BABU SHIVSHANKER TIWARI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS SUBHADRA G PATEL for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 29/06/2006

ORAL JUDGMENT

By filing this petition, the petitioner has challenged the detention order dated 7.12.2005. By the said order, the petitioner is detained as

dangerous person under Gujarat Prevention of Anti Social Activities Act, 1985 (“PASA” for short). Along with the detention order, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference to two criminal cases pending against the petitioner. So far as case No. 1 is concerned, it is filed under Section 379, 114 of the Indian Penal Code and the same is in connection with theft of motor car. So far as case No. 2 is concerned, the same is filed under Section 399, 120B of the I.P.C. as well as under the Arms Act and under the provisions of the B.P. Act. After recording statements of witnesses under Section 9(2) of the Act and after being subjectively satisfied, the detaining authority has detained the petitioner as a dangerous person under PASA.

The learned advocate for the petitioner has submitted that so far as two cases are concerned, they are individual in nature and simply because the cases are registered against the petitioner, it cannot be said that the petitioner is a dangerous person. It is submitted that the statements have been recorded in order to give live to the detention order which is mainly based on the pending criminal cases against the petitioner. The learned advocate for the petitioner in order to substantiate her say relied on the Division Bench judgement of this Court in **A. J. Solanki V. Police Commissioner, Surat** reported in 2000 (1) GLH 393. In paragraph 22 of the said judgement, Division Bench of this Court has held as under :

> “So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia vs. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs.”

The learned advocate for the petitioner has submitted that at the time of passing the detention order the petitioner was in judicial custody. It is further submitted that without there being any credible and cogent material on record, the detaining authority has come to the conclusion that even though the petitioner is in judicial custody, he may be released on bail on presenting the application for bail and thereafter he may continue with such activity. It is pointed out by the learned advocate for the petitioner that the detaining authority has not stated as to on what basis the authority has come to the conclusion that the petitioner on presenting his application will be released on bail. It is

submitted that there is no material on record for coming to such conclusion especially when the bail application was not preferred at the relevant time by the detenu. In this connection, the learned advocate for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of Honourable Supreme Court in the case of **T.V. SRAVANAN vs. STATE** reported in (2006) 2 SCC 664. In the said judgment, the Honourable Supreme Court has held as under in paragraphs 13 and 14:

> "13. A somewhat similar reasoning was adopted by the detaining authority in Rajesh Gulati v. Govt. of NCT of Delhi. This Court noticing the facts of the case observed: (SCC pp. 133-134, para 13).
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> > ""13. In this case, the detaining authority's satisfaction consisted of two parts – one: that the appellant was likely to be released on bail and two: that after he was so released the appellant would indulge in smuggling activities. The detaining authority noted that the appellant was in custody when the order of detention was passed. But the detaining authority said that 'bail is normally granted in such cases'. When in fact the five applications filed by the appellant for bail had been rejected by the courts (indicating that this was not a 'normal' case), on what material did the

> detaining authority conclude that there was 'imminent possibility' that the appellant would come out on bail? The fact that the appellant was subsequently released on bail by the High Court could not have been foretold. As matters in fact stood when the order of detention was passed, the 'normal' rule of release on bail had not been followed by the courts and it could not have been relied on by the detaining authority to be satisfied that the appellant would be released on bail. (See in this context Ramesh Yadav v. District Magistrate, Etah, AIR at p. 316).””

14. We are satisfied that for the same reasons the order of detention cannot be upheld in this case. The bail applications moved by the appellant had been rejected by the courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The 'imminent possibility' of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority o n the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such

material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, not sufficient compliance with the requirements as laid down by this Court. These are the reasons for which while allowing the appeal we directed the release of the appellant by order dated 13.12.2005."

Since in the instant case case the detaining authority has not stated anything as to on what basis it has formed the opinion that the petitioner will be released on bail and there is no material on record for coming to such conclusion and in view of the aforesaid judgement of the Hon'ble Supreme Court in the case of T.V. SRAVANAN VS. STATE (supra), the order of detention is required to be set aside on the aforesaid ground.

In the result, this petition is allowed. Order of detention dated 7.12.2005 is quashed and set aside. Petitioner Kartik alias Babu Shivshanker is ordered to be released forthwith unless his presence is required in connection with any other case. The learned advocate for the petitioner has made a voluntary statement that the petitioner will not enter Vadodara Police Commissionerate area till 31.10.2006 except for attending the pending criminal cases. This voluntary statement is recorded. The learned A.G.P., has submitted that he will communicate this aspect to the authority and the officer who is present in the Court will also inform

the Vadodara Police Commissioner and it is for the concerned authority to monitor the same. Rule is made absolute with no order as to costs.

(P.B. MAJMUDAR, J)

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